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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 471

TEXAS EMPLOYERS' INSURANCE ASSOCIATION, ET AL., PETITIONERS

v.

HUGH A. VORIS, DEPUTY COMMISSIONER, EIGHTH COMPENSATION DISTRICT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT HUGH A. VORIS, DEPUTY COMMISSIONER, IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the United States District Court for the Eastern District of Texas, Beaumont Division, (R. 357-359) has not been reported. The opinion of the United States Court of Appeals for the Fifth Circuit (R. 369-378) is reported at 190 F. 2d 929.

JURISDICTION

The judgment of the United States Court of Appeals was entered on July 11, 1951 (R. 379). A petition for rehearing was filed on July 31, 1951 (R. 380) and was denied on August 10, 1951 (R. 392). On October 31, 1951, the time within which to file a petition for a writ of certiorari was extended by Mr. Justice Black to and including December 10, 1951 (R. 393). The petition was filed on December 10, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The decedent was injured in an explosion while employed on the navigable waters of the United States. About eight months later he committed suicide. The Deputy Commissioner awarded death benefits to his survivors under the Longshoremen's and Harbor Workers' Compensation Act on the ground that the suicide was the result of an irrational state of mind and an uncontrollable impulse caused by the accident. The District Court vacated the award on the ground that the record contained no substantial evidence sustaining the Deputy Commissioner's finding of decedent's mental disturbance. The Court of Appeals reversed, holding that the Deputy Commissioner's award was not forbidden by law and was supported by substantial evidence on the record considered as a whole. The questions presented are:

1. Whether the Deputy Commissioner's finding that the suicide of the deceased employee was the result of a mental condition caused by the accident, rather than of a "willful intention" to kill himself, was in "accordance with law" and supported by substantial evidence.

2. Whether the rule announced by this Court in *National Labor Relations Board* v. *Pittsburgh S. S. Co.*, 340 U.S. 498, 502, precludes the Court of Appeals from making an independent determination as to whether the Deputy Commissioner's award is supported by substantial evidence on the record considered as a whole.

STATUTES INVOLVED

The Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 901 ff)[1] provides in pertinent part:

> Sec. 3 (33 U.S.C. 903).
>
> * * * * *
>
> (b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.
>
> Sec. 21 (33 U.S.C. 921).
>
> * * * * *
>
> (b) If not in accordance with law, a compensation order may be suspended or set aside,

[1] Hereinafter referred to as the Act.

in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the district court of the United States for the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

* * * * *

STATEMENT

On October 8, 1948, the deceased Arthur Heinrich was an employee of petitioner Burton Construction Company. He was engaged in the repair of a motor vessel then located on the navigable

waters of the United States when an explosion occurred, as a result of which he suffered burns on his hand and face and a general shock of undetermined degree (R. 331, 370). Heinrich apparently recovered from his physical injuries but underwent a serious mental deterioration, which prevented him from working for any considerable period of time, brought about a complete change of his personality, and required repeated medical and psychiatric treatment (R. 377-378).

On May 21, 1949, he suffered a gunshot wound in his forehead from which he died on June 10, 1949. In compensation procedings instituted under the Act, the Deputy Commissioner found (R. 332):

> * * * that said gunshot wound was inflicted by employee, Arthur Heinrich, himself, with the intention of killing himself; that it is further found that said act was carried out in a fit of mental despondence and depression resulting primarily from the effects of said explosion of October 8, 1948; that said act was the result of an irrational state of mind and uncontrollable impulse, and that it was not an act occasioned by the willful intention of the employee to injure or kill himself as contemplated by Section 3(b) of the Longshoremen's and Harbor Workers' Compensation Act; * * *

and awarded death benefits to the widow and minor children of the deceased (R. 333-334).

Petitioners (the employer and the insurance carrier) thereupon brought injunction proceed-

ings in the United States District Court pursuant to Sec. 21(b) of the Act (33 U.S.C. 921(b), *supra*, pp. 3-4) (R. 6-21). The District Court, on December 12, 1949, granted a preliminary injunction staying payments under the award (R. 1-2, 24) and on July 26, 1950, issued an informal letter opinion (R. 357-359) to the effect that in the absence of any supporting evidence the findings of the Deputy Commissioner could not be upheld. A final decree vacating the award of the Commissioner and making permanent the interlocutory injunction was entered in due course (R. 341-343).

The Court of Appeals reversed the judgment of the District Court (R. 369-378). It held that the award was not forbidden by law and was supported by substantial evidence.

ARGUMENT

Petitioners attack the decision below on two grounds. First, they claim that the court below erred in holding that the mental derangement of the decedent was of a sufficiently serious nature to avoid the application of Section 3(b) of the Act (*supra*, p. 3), under which injury occasioned solely by the "willful intention" of the employee to kill himself is not compensable. Their second contention is that, under the ruling of this Court in *National Labor Relations Board* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, 502-503, the Court of Appeals erred in reviewing the findings of the District Court on the substantiality of the evidence.

1. This case arises under Sec. 21(b) of the Act (33 U.S.C. 921(b), *supra*, pp. 3-4). Under this section, an award may be set aside only if it is forbidden by law (*Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 478) or if the findings are unsupported by substantial evidence on the record considered as a whole. *O'Leary* v. *Brown-Pacific-Maxon, Inc.*, 340 U.S. 504, 508. The court below properly held that the Deputy Commissioner's award was not forbidden by any rule of law and that it is supported by substantial evidence on the record considered as a whole.

(a). The Deputy Commissioner found that the decedent had committed suicide in a fit of mental despondence and depression resulting primarily from the accident and ruled that a suicide which was the result of an irrational state of mind and uncontrollable impulse was not willfully intended within the meaning of Section 3(b) of the Act (33 U.S.C. 903(b), *supra*, p. 3). (R. 332).

The Act does not state explicitly that Sec. 3(b) is inapplicable where the suicide has been caused by insanity. But suicide clauses, whether statutory or contractual, must be given a reasonable interpretation. Cf. *Bigelow* v. *Berkshire Life Ins. Co.*, 93 U.S. 284, 286. Petitioners concede that a suicide caused by insanity may be compensable if the insanity was of a sufficiently violent nature. They contend, however, that the Deputy Commissioner should have followed the so-called Massachusetts

rule pursuant to which a suicide is not compensable where it is the result of "voluntary wilful choice determined by a moderately intelligent mental power which knows the purpose and the physical effect of the suicidal act even though choice is dominated and ruled by a disordered mind."[2]

The federal law does not specify the quantum of mental derangement required to overcome the suicide exception of Sec. 3(b). The standard chosen by the Deputy Commissioner (an uncontrollable impulse brought about by the accident (R. 332)) is supported by decisions of this Court dealing with suicide clauses in contractual life insurance policies (*Life Insurance Co.* v. *Terry,* 15 Wall. 580, 591; *Insurance Co.* v *Rodel,* 95 U.S. 232; *Connecticut Life Insurance Co.* v. *Akens,* 150 U.S. 468). And a number of states have interpreted their compensation legislation to the effect that any suicide caused by a disturbance of the employee's mind traceable to the accident is compensable (see *e.g., Matter of Delinousha* v. *National Biscuit Co.,* 248 N. Y. 93, 96; *Wilder* v. *Russell Library Co.,* 107 Conn. 56, 62; *Whitehead* v. *Keene Roofing Co.,* 43 So. (2d) 464, 465 (Fla.)).[3]

These decisions seem to serve the needs of a com-

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[2] This rule was first announced in *Sponatski's Case,* 220 Mass. 526, 530. The Massachusetts law has since been modified by statute. Mass. Gen. Laws [Ter. Ed.] Ch. 152, Sec. 26 A; cf. *Ruschetti's Case,* 299 Mass. 426, 428.

[3] The British decisions are similar. Cf. *Coulter* v. *Coltness Iron Co., Ltd.,* 31 Butterworth Comp. Cas. (Supp.) 111 and Willis, *Workmen's Compensation* (37th ed. 1945) 243-245.

pensation statute far better than the virtually prohibitive Massachusetts rule.[4] Hence, it cannot be said that the ruling made by the Deputy Commissioner is without any reasonable legal basis (*Hurley* v. *Lowe,* 168 F. 2d 553 (C.A. D.C.), certiorari denied, 334 U.S. 828) or that it is prohibited by law. *Cardillo* v. *Liberty Mutual Insurance Co.,* 330 U.S. 469.[5]

(b). The court below properly found that there was substantial evidence to support the Deputy Commissioner's findings. Its summary of the pertinent portions of the record (R. 377-378) shows the changes in the decedent's personality, his inability to work for any length of time, his mental deterioration, his need for medical and psychiatric attention, and the opinions of the several doctors

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[4] Cf. *Matter of Delinousha* v. *National Biscuit Co.*, 248 N.Y. 93, 95-96. It is significant that Massachusetts itself has modified the rule by statute (*supra*, p. 8, fn. 2) and that a jurisdiction such as Pennsylvania, which professes to follow it, actually applies it in a manner in which it loses its rigors and becomes indistinguishable from the rule applied by the Deputy Commissioner in the instant case. See *Lupfer* v. *Baldwin Locomotive Works*, 269 Pa. 275; *Vadnal* v. *Krsul-Kutchel Coal Co.*, 149 Pa. Sup. 269.

[5] The court below went beyond this and held that the Deputy Commissioner's award could be upheld even under the strict Massachusetts rule (R. 376). Consequently, it held that this case did not present a proper vehicle to determine whether the Massachusetts rule or the more liberal rule, represented *e.g.*, by the *Delinousha* case, fn. 4, *supra*, should apply. Petitioner, however, continues to ask this Court (Pet. 10-12) to settle the question whether or not the strict Massachusetts rule is applicable under the Longshoremen's and Harbor Workers' Act. We submit that, even assuming *arguendo* that the question ultimately might merit review, such review should await a case where the facts clearly present the problem.

that he was suffering from a mental depression. It is true that the experts disagreed as to the degree of the depression, the chances of recovery, and its suicidal nature. But where the evidence permits the drawing of an inference either way, the Deputy Commissioner alone has the power of decision. *Del Vecchio* v. *Bowers,* 296 U.S. 280, 287.

2. Petitioners' second argument is to the effect that the Court of Appeals erred in reexamining the record in order to determine whether or not the findings of the Deputy Commissioner were supported by substantial evidence. They claim that under the ruling of this Court in *National Labor Relations Board* v. *Pittsburgh S. S. Co.,* 340 U.S. 498, 502-503, the evaluation of the substantiality of the supporting evidence is the exclusive function of the first reviewing court which must not be disturbed unless that court's determination is obviously erroneous.[6]

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[6] In view of the quantity and quality of the evidence referred to by the Court of Appeals as supporting the Deputy Commissioner's finding (R. 377-378), it appears likely that the District Court's failure to find any substantial evidence to support the award was based on some error of law. The informal opinion embodied in a letter is short and inconclusive (R. 357-359), but the District Judge seems to have believed that the finding that the deceased had *intentionally* committed suicide, *i.e.*, that the shooting was not accidental, negatived any possibility of insanity. Moreover, he may have believed that the opinion evidence of the expert witnesses, who had treated the decedent, did not constitute competent evidence or that he and not the Deputy Commissioner had the power to evaluate it. In any event, we submit the ruling was sufficiently erroneous to require a full review of the record in the Court of Appeals even under petitioners' theory.

The reluctance of this Court in the *Pittsburgh S. S. Co.* case, *supra,* to reappraise the administrative record, however, was not based on the circumstance that it was the second appellate court but on the nature of its reviewing functions in cases coming before it on writ of certiorari. Such review is usually devoted to the settlement of legal issues of general importance, rather than to a review of the evidence and the inferences drawn from it. 340 U.S. at 502, cf. *Layne and Bowler Corp.* v. *Western Well Works,* 261 U.S. 387, 393; *General Talking Pictures Co.* v. *Western Electric Co.,* 304 U.S. 175, 178; *United States* v. *Johnston,* 268 U.S. 220, 227. The appellate jurisdiction of the United States Courts of Appeals, in contrast, is plenary and mandatory; hence, the considerations which in the *Pittsburgh S. S. Co.* case, *supra,* militated against a reappraisal of the administrative record by this Court, did not apply here.

CONCLUSION

The decision of the court below is clearly correct and further review is not warranted. There is no conflict. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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